

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 03-12499 MLW

TERRI L. PECHNER-JAMES)
and **SONIA FERNANDEZ**)
Plaintiffs)
VS.)
CITY OF REVERE, THOMAS)
AMBROSINO, MAYOR, CITY)
OF REVERE POLICE DEPT.)
TERRENCE REARDON, CHIEF)
OF POLICE, BERNARD FOSTER)
 SALVATORE SANTORO, ROY)
COLANNINO, FREDERICK)
ROLAND, THOMAS DOHERTY)
JOHN NELSON, JAMES RUSSO)
MICHAEL MURPHY and)
STEVEN FORD)
Defendants)

AFFIDAVIT OF EXPLANATION OF DOCKET NO. 256

I, James S. Dilday, Esq. duly sworn depose and say:

1. I am an attorney duly admitted to practice in the Commonwealth of Massachusetts with offices at 27 School Street, Suite 400, Boston, MA.
2. I am counsel of record in Pechner-James et al. v City of Revere et al. Civil Action No: 03-12499 MLW; my office represents the two named Plaintiffs, Terri Pechner-James and Sonia Fernandez.
3. This case was first filed in the Suffolk Superior Court in October 2002; the Defendants moved the case to the U.S. District Court on December 11, 2003.
4. My office successfully represented both Plaintiffs in their administrative hearings before the Division of Administrative Appeals and the Public Employee Retirement Administration Commission. Both Plaintiffs received an award of disability retirement because they were injured by the hostile environment of the Revere Police Department.

5. My office, in a brief entitled: **Massachusetts Administrative Determinations in Federal Court: The Application of Res Judicata and Collateral Estoppel**: addressed the legal significance of the administrative findings of disability and its causation by the Revere Police Department. **Exhibit A and Docket No: 251**(submitted to the court on October 23, 2006.)

6. My office's representation of Plaintiff, Terri Pechner-James, began in 2001. A partial accounting of the work performed for the Plaintiff, in preparation and execution of this civil action is attached as **Exhibit B**. My office conducted detailed research and performed extensive preparation in support of this civil action.

7. My office continues to represent Plaintiff, Sonia Fernandez; my office also represented Plaintiff, Terri Pechner-James, during an extensive period of discovery. This period included many depositions and multiple motions filed by the Defendants. **Exhibit C** is a partial list of the motions, status reports and supplemental pleadings filed by the Defendants.

8. This civil action now has 256 docket entries. Docket No:1 was entered on December 11, 2003; Docket No: 256 was filed on January 19, 2007; my office has been counsel of record for this Plaintiff during the entire period covered by these docket entries. My office has also been counsel for this Plaintiff for more than two years prior to the period covered by the docket entries. **Exhibit B**.

9. My office represented Plaintiff, Terri Pechner-James on October 23, 2006 when Magistrate-Judge Leo T. Sorokin ordered counsel for the parties to appear in Courtroom 14 at 9:00 am on Thursday, November 2, 2006 for a meet and confer session.

10. The meet and confer session of November 2, 2006 was to be followed by a Motion Hearing at 11:00 am.

11. As a result of the Hearing on November 2, 2006, this office arranged to meet with Attorney Michael Akerson at 27 School Street, Suite 400, Boston, MA 02108.

12. On January 11, 2007, I met with Attorney Michael Akerson and we started our discussion on the mechanics of the mediation recommended by the court. Attorney Akerson and I made significant progress during our discussions. Before the end of our discussions, we were interrupted by a member of my staff; she presented me with a fax from Attorney Peter J. Unitt. The fax stated that Plaintiff, Terri Pechner-James was requesting changes in representation in this civil action and in her divorce action.

13. Attorney Michael Akerson was present and witnessed the fax that the Plaintiff had sent to my office.

14. The Plaintiff, Terri Pechner-James, in a letter dated January 12, 2007 confirmed the content of the fax my office had received from Attorney Unitt's office on January 11, 2007. **Exhibit D.**

15. In a letter dated January 16, 2007, Attorney Unitt stated his intent to enter his appearance.

16. On January 19, 2007, I filed with the court-**Docket No.: 256-Motion To Withdraw As Counsel.**

17. I filed my withdrawal based on Plaintiff's letter- **Exhibit D** and Attorney Unitt's letter **Exhibit E.**

18. On January 22, 2007, the Court sent electronic notice of a hearing on my motion to withdraw; the hearing is scheduled for February 6, 2007 at 2:30 pm.

19. On January 23, 2007, I sent a letter to Attorney Unitt that informed him of the hearing that the court had scheduled for February 6, 2007 at 2:30 pm. **Exhibit F.**

20. To date, Attorney Unitt has not filed an appearance; he has not stated whether he still intends to file an appearance. My office is familiar with this case; we have the experience and the expertise acquired over more than five years of experience; we can proceed in a timely manner with any instructions provided by the court.

21. Both counsel for the Defendants and this office have suspended mediation efforts pending the court hearing on February 6, 2006 at 2:30 pm.

22. Plaintiff, Sonia Fernandez, has instructed this office to pursue mediation, settlement or trial.

Sworn under pains and penalties of perjury.

/s/ James S. Dilday, Esq.

James S. Dilday, Esq.
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Date:

EXHIBIT – A – Massachusetts Administrative Determinations In Federal Court: The Application of Res Judicata and Collateral Estoppel: Also Docket No: 251

EXHIBIT – B – Partial Accounting of Time for Terri Pechner-James

**EXHIBIT – C – Request for Protective Order based on Excessive Pleadings
by Defendants.**

EXHIBIT – D- Terri Pechner-James letter dated January 12, 2007.

EXHIBIT – E - Attorney Unitt's letter dated January 16, 2007.

EXHIBIT – F- Attorney Dilday's letter dated January 23, 2007.